10. (Unclassified - RW) William Cherkasky, Administrative Assistant to Senator Gaylord A. Nelson (D., Wis.), called. He requested copies of STATSPEC the [redacted] which have been sent the Senator. I told him I would check and see what we could do but that we do not keep copies of these items on file.

11. (Unclassified - LLM) Met with Robert Horner, House Internal Security Committee staff, and provided him with a personal resume on an Agency employee who will soon be retiring against the possibility that the Committee may be interested. As it turned out, Horner was somewhat familiar with the individual and said he would be glad to review his resume in light of the staffing requirements of the Committee.

12. (Internal Use Only - LLM) Met with Robert Blakey, Subcommittee on Criminal Laws and Procedures, Senate Judiciary Committee, and gave him copies of the Morrison and Miskovsky articles which Senator Sam Ervin's (D., N. C.) aide, Mrs. Margolis, had requested earlier. Blakey appreciated our thinking of him in this connection. I tentatively set next Thursday as the date we would come up with our revisions of S. 1. Blakey said that because of unfolding events he doubts very much that the bill will see the light of day for some time to come.

13. (Internal Use Only - RJK) Delivered to the offices of Senators Edward Kennedy (D., Mass.), George McGovern (D., S. Dak.), Gaylord Nelson (D., Wis.), Henry Jackson (D., Wash.), and J. W. Fulbright (D., Ark.) STATSPEC [redacted] in which their names were mentioned.

14. (Unclassified - RJK) Met with Ken Guenther, special assistant to Senator Jacob Javits (R., N. Y.), and gave him a suggested reply for Joseph Irving, a constituent who had written to the Senator asking certain questions about the Central Intelligence Agency.

25X1A [redacted]

25X1A

cc: O/DDCI [redacted]

25X1A [redacted] Mr. Houston

25X1A Mr. Thuermer [redacted] Mr. Clarke

DDI DDM&S EA/DDO DDS&T OPPB

Historical review of the problem and some remedial proposals.

THE PROTECTION OF INTELLIGENCE DATA

John D. Morrison, Jr.

The unauthorized exposure of classified information is a chronic problem for governments and intelligence agencies. Defense against the conscious agent of a foreign power is different from, and in some ways less difficult than, deterring revelations due to carelessness, malice, or greed on the part of government employees. The problem is particularly acute in a democratic society whose laws and courts must provide broad protection to criminal defendants. The deterrence provided by the espionage laws and related statutes is weakened by the difficulty of prosecution under them. This is especially true in cases involving disaffected or careless employees of intelligence agencies; the defenses usually include strong equitable pleas which may excite a sympathetic public response.

No legislation or administrative procedure can offer perfect protection. It is submitted, however, that both our laws and our administrative procedures could be improved so as to provide more effective deterrence. Some particular avenues that might be taken will emerge from the following discussion.

The Espionage Laws: An Incomplete Structure

A review of American legislation in the field of criminal espionage shows that historically there has been limited legislative effort directed to the protection of intelligence data. As a result there is a startling lack of protection for a governmental function of growing importance and sensitivity. Perhaps the need for laws protecting intelligence data has reached significant proportions only in the relatively recent past.

The changes, technological and other, in the manner in which nations deal with each other have caused some improvements in legislation dealing with the protection of state secrets. Diplomatic communications have traditionally been protected. As early as 1807, the Supreme Court suggested that the legislature recognize and provide against crimes affecting the national security which "have

CENTRAL INTELLIGENCE AGENCY
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THE ESPIONAGE LAWS

Introduction

The espionage laws provide the basic statutory protection to the Government against the taking and use of defense information by those whose interests are inimical to the national security of the country. As early as 1807, the Supreme Court suggested that the legislature recognize and provide against crimes affecting the national security which "have not ripened into treason."[1] It was not until 1911, however, that Congress passed the first important statute which dealt with the broad problem of espionage. The language of the 1911 Act was amended in 1917 to read much as it does today. This paper deals with the background and interpretation of the espionage laws which as codified are found in Title 18 of the United States Code, sections 791-798.

The espionage laws are the principal statutory protection against unauthorized disclosure of intelligence materials and information. If prosecution is recommended in any given case, then the Department of Justice should be apprised of the facts and left to perform the arrest, indictment and prosecution. A "citizen's arrest" might be made by a Central Intelligence Agency official, for example, under emergency circumstances, but would be legally perilous as standard procedure. The Justice Department would make the determination whether prosecution is justified in a particular case. It is germane to consider that specific information "protected" under the statute is a fact question for the jury and that the courts have taken the position that the Government, in a criminal prosecution, must make a full disclosure of the relevant facts or fail in its case.

The 1911 Espionage Act

Upon recommendation by the Justice Department, a bill to prevent the disclosure of national defense secrets was introduced in the 61st Congress and, after several changes which necessitated four redrafts of the bill in committee, it was sent to the floor of the House where a short debate took place on 6 February 1911.[2] The bill was said to be patterned after the British Official Secrets Act, a major difference, however, resulted from a change made in committee where the presumption of intent occurring in the English Statute was stricken, because the committee members thought the presumption "was not fair."

[1] Ex parte Bollman and Ex parte Swarthout; 4 Cranch 75, 127; 2 L.Ed. 554, 571.
[2] 46 CONG. REC. 2030 (1911).